

# BEST AVAILABLE COPY

## REMARKS

Claims 1-25 are pending in the present application. Claims 1, 10 and 12 have been amended herewith. Reconsideration of the claims is respectfully requested.

### **I. 35 U.S.C. § 103, Obviousness**

The Examiner rejected Claims 1-25 under 35 U.S.C. § 103 as being unpatentable over Williams et al. (US Patent No. 6,304,973) in view of Frezza et al. (US Patent No. 4,638,356) and further in view of Moiin et al. (US Patent No. 6,449,641). This rejection is respectfully traversed.

Appellants show that the cited Williams and Frezza references have been improperly combined using hindsight analysis. Because of the encryption technique described by Williams when exchanging messages between hosts, and the resulting requirement for encryption key exchange between the hosts *prior to* host message communication (Williams col. 20, lines 64-67; col. 21, lines 6-8), there would have been *no motivation* to also include a key as part of the message/packet, as transmitting a key along with the encrypted messages as taught by Williams would effectively defeat the entire purpose of Williams. Specifically, if a key was sent with the encrypted message, a network snooper (Williams Col. 7, lines 50-55) could capture the key/encrypted message and use such key to decrypt the accompanying message. Alternatively, if the key were not a key used as part of the encryption/decryption, there would be no reason to include such a key with the message as it would have no other purpose, and would degrade system performance by transmitting superfluous information. This establishes that there would have been no motivation to selectively combine the teachings of the cited references other than the motivation coming from the present patent application, which is improper hindsight analysis.

The Examiner states, in citing *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981), that the test of obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor it is that that claimed invention must be expressly suggested in any one or all of the references, but rather the test is what the combined teachings of the references would have suggested to one of ordinary skill in the art. Applicants urge that, based upon such characterization of Applicants argument being either (i) it is not possible to bodily incorporate Frezza with Williams, or (ii) there is no expressed suggestion to

combine, it is apparent the Examiner fails to properly comprehend the basis of Applicants position regarding the improper combination. Applicants are not arguing no ability to bodily combine, and are not arguing no expressed suggest to combine the reference. Rather, Applicants are arguing that there would have been *no motivation to combine the references*, which is a proper test for obviousness. As stated by the Federal Circuit, "virtually all [inventions] are combinations of old elements." *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 1983); *see also Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983) ("Most, if not all, inventions are combinations and mostly of old elements."). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996). To prevent the use of hindsight based on the invention to defeat patentability of the invention, *this court requires the examiner to show a motivation to combine the references that create the case of obviousness*. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 149 F.3d 1350, 47 USPQ 2d 1453 (Fed. Cir. 1998). Applicants have clearly established, as described above, that a skilled artisan, when confronted with the same problems as the inventor, would *not have been motivated* to select certain elements from the cited references for combination in the manner claimed. It is thus urged that the only motivation for combining the references must therefore be coming from Applicants' own patent specification, which is improper hindsight analysis. It is error to reconstruct the patentee's claimed invention from the prior art by using the patentee's claims as a "blueprint". When prior art references require selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight obtained from the invention itself. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985). Therefore, Claim 1 has

been erroneously rejected as least for this reason of improper combination of references as a skilled artisan would not have been motivated to select certain elements from the cited references for combination in the manner claimed.

Further with respect to Claim 1, Applicants urge that the Examiner has mischaracterized the teachings of the cited Williams reference. In rejecting Claim 1, the Examiner states (on page 4, item 4(c) of the Office Action dated 7/5/2005) that Williams teaches at col. 22, lines 48-52 "dropping a packet without a response to a source if the first key does not match the second key". Applicants show that such passage is instead directed to a technique for transmitting a packet onto a network (and thus there is no 'without a response to a source', since this processing is done within the source since it is a transmit operation where a packet is being transmitted onto a network by the source). Perhaps even more importantly, this passage does not describe any use of keys, or of dropping a packet if a first key does not match a second key, as erroneously alleged by the Examiner. Instead, this passage describes determining whether a *destination address* is in an approved transmit *list*. Quite simply, a destination address is not a key. Thus, it has been shown that the Williams reference has been mischaracterized by the Examiner in an attempt to establish obviousness, and thus this obviousness rejection is shown to be in error based on this mischaracterization - as Williams does not teach dropping received packets without a response to a source if a first key does not match a second key. Claim 1 has thus been erroneously rejected.

Still further with respect to Claim 1, Applicants urge that the Examiner has mischaracterized the teachings of the cited Frezza reference. The Examiner cites Frezza's teaching at col. 6, lines 37-44 in support of an alleged teaching of "receiving a packet from a source, wherein the packet includes a first key, wherein the first key is a partition key associated with a particular partition of a multi-partitioned network having a plurality of partitions, and is used such that the node can determine which of the partitions of the multi-partitioned network can access the node". Applicants urge that to the contrary, this Frezza passage teaches the receipt of an encrypted channel access code, which is decrypted using an internal decryption key and this decrypted code is then used by the subscriber node to generate frame verifier codes which are subsequently used by such subscriber node when placing transmitting packets on the network (Frezza col. 6, lines 37-44; col. 4, lines 1-24). This received channel access code is not used to determine which partitions can access a node, but is instead used to subsequently generate frame verifiers that are included in data packets that are unconditionally placed on the network.

Still further with respect to Claim 1, Applicants urge that none of the cited references teach or suggest that the node that actually receives a packet containing a partition key - itself - determines whether the received packet is from a partition authorized to access the node. As explained above, the cited Williams passage teaches a node that *transmits* a packet on a network. Similarly, the cited Frezza package teaches receipt of an encrypted key which is decrypted by a node and used by the node to generate frame verifiers which are then used by the node during subsequent, and unconditional, transmission of data packets onto the network. Applicants have amended Claim 1 to further emphasize this distinction. It is thus urged that Claim 1 is not obvious in view of the cited references.

Applicants initially traverse the rejection of Claims 2-4 and 7-9 for similar reasons to those given above with respect to Claim 1.

Further with respect to Claim 7 (and dependent Claim 9), it is urged that none of the cited references teach or suggest the claimed feature of "wherein the node comprises at least one device private to the node and at least one device shared with at least one of the partitions of the multi-partition network". In rejecting Claim 7, the Examiner cites Williams' teaching at col. 27, lines 38-47 and Molin's teaching at col. 4, lines 15-19; col. 4, line 66 - col. 5, line 4; col. 13, lines 41-44; and col. 13, lines 52-55 as teaching this claimed feature. Applicants show that the cited Williams passage at col. 27, lines 38-47 states:

"The foregoing descriptions and drawings should be considered as illustrative only of the principles of the invention. The invention may be configured in a variety of manners and is not limited by the design of the preferred embodiment. Numerous applications of the present invention will readily occur to those skilled in the art. Therefore, it is not desired to limit the invention to the specific examples disclosed or the exact construction and operation shown and described. Rather, all suitable modifications and equivalents may be resorted to, falling within the scope of the invention."

As can be seen, this passage makes no mention whatsoever of any of the specific features recited in Claim 7, such as the device that is private to a node and another device that is shared with a partition of a multi-partitioned network. Nor do the teachings of the cited Molin passages

overcome this teaching deficiency. Molin states at col. 4, lines 15-19; col. 4, line 66 – col. 5, line 4; col. 13, lines 41-44; and col. 13, lines 52-55:

In accordance with the present invention, cluster membership in a distributed computer system is determined by determining with which other nodes each node is in communication and distributing that connectivity information through the nodes of the system (col. 4, lines 15-19).

With the failures described above, the cluster membership can be partitioned into two or more fully-connected subsets of nodes having a majority of the votes, a minority of the votes, or exactly half of the votes. The first two cases may be resolved by only allowing a subset having a majority vote to form the next generation of the cluster (col. 4, line 66 – col. 5, line 4).

In the case of a shared disk configuration with CVM and Netdisk, it is assumed that the master and its backup node for all NetDisk devices have direct physical access to the underlying physical device (col. 13, lines 41-44) (emphasis added by Applicants).

We also assume that information about the primary and backup ownership of a NetDisk device or other resources is maintained in the Cluster Configuration Database, CCD, and is available to all nodes in a consistent manner (col. 13, lines 52-55) (emphasis added by Applicants).

As can be seen, none of these cited passages teach two devices, where one of the devices is private to a node and the other is shared. For example, all physical devices are connected to each of two nodes (Figure 2), and certain information pertaining to all of the physical devices is available to all of the nodes - and thus they are not private to a given node, as claimed.

Further with respect to Claim 9, it is urged that none of the cited references teach or suggest the claimed feature of "wherein the selected recipient is a subnet manager attached to a subnet that is responsible for configuring and managing switches, routers and channel adapters of

the subnet". In rejecting Claim 9, the Examiner states that this claimed feature is taught by Williams at col. 17, lines 19-27 and col. 27, lines 38-47. The Williams passage at col. 27 has already been reproduced above, and it is urged that this passage makes no mention whatsoever of any of the specific features recited in Claim 9, such as a subnet manager. As to the passage cited at col. 17, there Williams states:

"The network 10 provides selectable auditing of the following types of events: login and logout of security officers at the NSC; change of security databases at the NSC; I&A of principals; statistical events, providing detailed information about the individual packets transmitted and received; exception events, including attempts to violate the security window, send to or receive from an unauthorized association, etc.; TCP/UDP port filtering rejections; and, TCP opens and closes."

As can be seen, there is no mention of any type of subnet manager attached to a subnet that is responsible for configuring and managing switches, routers and channel adapters of the subnet. Rather, this passage describes an internal audit function (which merely reports the occurrence of activities that occur). It is thus urged that Claim 9 has been erroneously rejected, as there are missing claimed features not taught or suggested by any of the cited references.

Applicants traverse the rejection of Claims 10-16 and 19-25 for similar reasons to those given above with respect to Claim 1.

Applicants further traverse the rejection of Claims 11 and 19 (and dependent Claim 21) for similar reasons to the further reasons given above with respect to Claim 7.

Applicants further traverse the rejection of Claim 21 for similar reasons to the further reasons given above with respect to Claim 9.

Therefore, the rejection of Claims 1-25 under 35 U.S.C. § 103 has been overcome.

## **II. 35 U.S.C. § 103, Obviousness**

The Examiner rejected Claims 5, 6, 17, 18 under 35 U.S.C. § 103 as being unpatentable over Williams in view of Kekic et al. (US Patent No. 6,664,978). This rejection is respectfully traversed.

Applicants urge that Claim 5, in combination with Claim 1, recites "receiving, by the node, a packet from a source, wherein the packet includes a first key, wherein the first key is a partition key associated with a particular partition of a multi-partitioned network having a plurality of partitions, and is used such that the node receiving the packet can determine which of the partitions of the multi-partitioned network can access the node receiving the packet". Neither Williams nor Kekic teach (i) a multi-partitioned network, or (ii) a partition key that is used such that the node receiving the packet can determine which of the partitions of the multi-partitioned network can access the node receiving the packet. Thus, it is urged that Claim 5 is not obvious in view of the combination of the cited Williams and Kekic references, as there are missing claimed features not taught or suggested by any of such cited references.

Still further with respect to Claim 5, and contrary to the Examiner's assertion, the cited Kekic reference does not teach incrementing a counter when a key mismatch is encountered. For example, the cited passage at Kekic col. 27, lines 12-18 states (the entire paragraph is being reproduced herewith to give the proper context):

In one embodiment, as described above, the event management model is a set of rules associated with a managed computer network element which causes specified actions to take place when a specified criterion is satisfied. A rule is evaluated upon occurrence of a predefined polling event or trap event for the managed computer network element. A typical criterion is testing whether a network management variable value has exceeded some threshold value. The specified actions can include, for example changing a component's state, executing a server operating system command, forwarding a trap to another host, and/or logging pertinent information. The severity associated with a element component's state is visually highlighted in the visual display of the managed element, and a visual cue notifies the user whenever information is logged. By carefully defining the polling and trap events and the set of rules, an accurate picture is constructed of extraordinary element behavior and advanced problem analysis is automatically performed to aid in common network management strategies including configuration management, fault management, and performance management.

As can be seen, there is no mention of any type of key or key mismatch determination, or the incrementing of a counter upon occurrence of a key mismatch. Rather, this passage teaches that the events are either (i) a predefined polling event, or (ii) a trap event. Thus, Claim 5 has been erroneously rejected as a proper prima facie showing of obviousness has not been established by the Examiner<sup>1</sup>.

Applicants traverse the rejection of Claim 6 for reasons given above with respect to Claim 5 (of which Claim 6 depends upon).

Applicants traverse the rejection of Claim 17 (and dependent Claim 18) for similar reasons to those given above with respect to Claim 5.

Therefore, the rejection of Claims 5, 6, 17, 18 under 35 U.S.C. § 103 has been overcome.

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<sup>1</sup> In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *Id.* To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP 2143.03. See also, *In re Royka*, 490 F.2d 580 (C.C.P.A. 1974). If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

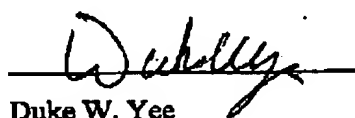


**III. Conclusion**

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,



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